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REMARKS

Upon entry of the present amendment, claims 21 - 24, 26, 29, 31 – 35 and 39 – 43 are pending, claims 21, 33, 40 and 41 have been amended, and claims 1 – 20, 25, 27 – 28, 30, 36 – 38 and 44 are cancelled.

In the final Office Action dated January 5, 2005, the Examiner objected to claims 26, 36 and 44 and allowed claims 29, 31 and 32. Claims 21- 24, 33 – 35 and 39 – 43 were rejected under 35 USC §112, first paragraph.

Claims 26, 36 and 44 were objected to as dependent upon a rejected base claim, but said to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 21 has been amended to recite a cryptic plasmid having a nucleic acid sequence of at least 95% sequence identity with SEQ ID NO: 1 and SEQ ID NO: 2. Claims 22 –24, 26 and 39 depend from claim 21.

Claim 33 has been amended to incorporate the limitations of now canceled claim 36 that is the cryptic plasmid having a nucleic acid sequence with at least 95% sequence identity to SEQ ID NO: 1 and SEQ ID NO:2. Claims 34, 35 and 40 depend from claim 33. Moreover claim 40 has been amended to recite “the nucleic acid sequence of SEQ ID NO: 1 and SEQ ID NO: 2” as opposed to -- a nucleic acid sequence of -- .

Claim 41 has been amended to incorporate the limitations of now cancelled claim 44 that is the cryptic plasmid having a nucleic acid sequence with at least 95% sequence identity to SEQ ID NO: 1 and SEQ ID NO:2. Claims 42 and 43 depend from claim 41.

New matter has not been introduced by this amendment.

In light of the amendments presented herein and the Examiner's statements that Claims 26, 36 and 44 would be allowable if rewritten in independent form and that Claims 29 -31 are allowed, Applicants believe the pending claims are in condition for allowance and issuance of a formal Notice of Allowance at an early date is respectfully

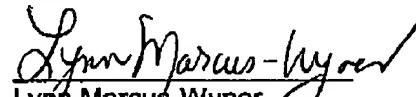
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requested, Applicants' amendments are believed to obviate all objections and rejections. If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (650) 846-7620.

Respectfully submitted,

Date: January 25, 2005

  
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